MEMORANDUM

TO: Deputy Chief Immigration Judges
Assistant Chief Immigration Judges
Immigration Judges
Court Administrators
Court Staff

FROM: The Office of the Chief Immigration Judge

SUBJECT: Operating Policy and Procedure Memorandum 97-10, Changes of Venue

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This OPPM supersedes OPPM 85-5 addressing Changes of Venue (COV) in light of changes in the regulations and in case processing procedures.

I. Immigration Judge Authority to Change Venue

Venue for Immigration Court proceedings lies in the Immigration Court where the charging document is filed by the Immigration and Naturalization Service (INS) pursuant to 8 C.F.R. § 3.14. Immigration Judges may, upon a motion, change venue in those proceedings pursuant to the authority contained in 8 C.F.R. § 3.20.

II. Requirement that Assigned Immigration Judge Rule on Motion to Change Venue

When a charging document has been filed by the INS with an Immigration Court, the case is randomly assigned by ANSIR's calendaring system to a specific Judge within that Court. Once a case has been assigned to a Judge, only the assigned Judge must rule on a Motion to Change Venue, unless the Judge is unavailable to complete his or her duties.

III. Requirement to Follow the "Law of the Case" Doctrine in Change of Venue Cases

In Change of Venue (COV) cases, once another Immigration Judge issues an order changing venue to another Court, the Judge assigned to the case is not free to hear the case *de novo* and ignore any orders issued by another Judge prior to the venue change, unless exceptional circumstances, described in this OPPM, permit departure from this policy. The "law of the case" doctrine, while non-statutory, is a well-established legal doctrine with a long-standing foundation in the federal courts. In essence the rule requires that:

> Once a court finally decides any issue of law, the law of the case holds that the ruling should be adhered to by a transferor court.

Korean Air Line Disaster of September 1, 1983, 664 F. Supp. 1488, 1489 (D.D.C.1987). Adherence to this doctrine is so critical in COV situations that even the Supreme Court has declared that "the policies supporting the doctrine apply *with even greater force to transfer decisions* than to decisions of substantive law; transferee courts that feel entirely free to revisit transfer decisions of a coordinate court threaten to send litigants into a vicious circle of litigation." Christianson v. Colt Industries Operating Corp., 486 U.S. 800, 816 (1988)(emphasis added).

Following the "law of the case" doctrine is crucial "to preserve the ordered functioning of the judicial process." U.S. v. Baynes, 400 F. Supp. 285 (E.D. Penn.), *aff'd*, 517 F.2d 1399 (3d Cir. 1975). It is also used "to prevent 'delay, harassment, inconsistency, and in some instances judge-shopping.'" General Electric Co. v. Westinghouse Electric Corp., 297 F. Supp. 84 (D. Mass. 1969). Moreover, it "promotes the finality and efficiency of the judicial process by 'protecting against the agitation of settled issues.'" Christianson, supra at 816 *citing* 1B James W. Moore et al., Moore's Federal Practice ¶ 0.404[1], p. 118 (1985).

Nevertheless, the law of the case doctrine is not absolute; rather, there are certain delineated circumstances where departure from the doctrine may be permitted. As one court indicated, the "rule was not absolute and all-embracing and there are exceptional circumstances which will permit one judge of a district court to overrule a decision by another judge of the same court in the same case." U.S. v. Wheeler, 256 F.2d 745, 746 (3d Cir.), *cert. denied*, 383 U.S. 873 (1958).

Like the court in Wheeler, I do not expect any Immigration Judge to follow this rule blindly. Circumstances which may warrant a deviation from this policy include: 1) a supervening rule of law, 2) compelling or unusual circumstances, 3) new evidence available to the second Judge, and 4) such clear error in the previous decision that its result would be manifestly unjust. Hayman Cash Register Co. v. Sarokin, 669 F.2d 162, 169 (3d Cir. 1982); Time Products v. J. Tiras Classic Handbags, 1997 WL 139525 (S.D.N.Y. 1997). *See also* Christianson, supra at 816; Arizona v. California, 460 U.S. 605, 617 (1983). Given a showing of any of these circumstances, the receiving Immigration Judge should reach his or her own decision, free of the constraints imposed by any ruling of the transferring Immigration Judge.

In maintaining this requirement from OPPM 85-5, I note that the "law of the case" doctrine is consistent with all existing immigration laws and regulations, and its application can be inferred from 8 C.F.R. § 240.1(b). Moreover, one coherent record is necessary to comply with the requirements for review once an appeal is filed. *See* 8 C.F.R. § 3.5. Lastly, because the "law of the case" doctrine has been categorized "only as a rule of policy and not as one of law," Wilson v. Ohio River Co., 236 F. Supp. 96, 98 (S.D. W.V.A. 1964), pursuant to my authority under 8 C.F.R. § 3.9, the "law of the case" doctrine, as stated in this section, shall apply in COV circumstances.

IV. Administrative Requirements for Valid Venue Changes

1. Mandatory Forwarding Address for Non-Detained Cases

The requirement that before a COV will be granted that the movant must provide a forwarding address was initiated in the preceding OPPM on this subject and subsequently became a regulatory requirement. *See* 8 C.F.R. § 3.20(c). This requirement was instituted to avoid an Immigration Court receiving a Record of Proceedings (ROP) through a COV and having no way to notify the party of a hearing date at the new location. Therefore, I reiterate that before a COV may be granted, an address where the respondent/applicant will reside in the jurisdiction to which venue is sought to be changed must be provided to the Immigration Judge. It would be helpful if the name and address of the respondent's or the applicant's representative, if any, in the second location is also provided to the Immigration Judge entertaining the motion for a COV. This information will allow the Immigration Court to which venue is transferred to properly notify the respondent/applicant of further hearings.

2. Improperly Issued COV Orders

Any ROP received containing an order changing venue but lacking a valid forwarding

address within the receiving jurisdiction will be returned to the sending court by the Court Administrator for the receiving court as an improperly issued COV.

3. Transfer Procedures

When a COV is granted, the ROP will be forwarded by overnight mail to the Immigration Court to which venue is changed. (Please refer to the current List of Administrative Control Offices for assistance in determining the proper mailing address.) A COV closes a case in the Immigration Court where granted, and is considered a "transferred out" matter for ANSIR purposes at that location. A COV to another Immigration Court is considered to be a new case for the receiving Court in accordance with the Uniform Docketing System.

4. Requirement for Pleadings and issue Resolution

Prior to granting a Motion for Change of Venue for good cause shown, the assigned Immigration Judge should make every effort, consistent with procedural due process requirements, to complete as much of the case as possible in the time available. Specifically, the Judge should attempt, where appropriate, to obtain pleadings; resolve the issue of deportability, removability, or inadmissibility; determine what form(s) of relief will be sought; set a date certain by which the relief application(s), if any, must be filed with the sending court; and state on the record that failure to comply with the filing deadline will constitute abandonment of the relief application(s) and may result in the Judge rendering a decision on the record as constituted. Note, however, that a copy of the I-589 submitted to support a motion for COV is not considered a definitive filing. The actual filing must occur in open court at the Court to which the case is transferred. See OPPM 96-1 § VIII E, p.9.

5. Processing Problems and Procedures in Detained Removal Cases

Due to the periodic lack of bed space in some detention facilities, the INS continues to relocate aliens, even after charging documents have been filed with the local Immigration Court. This obviously causes a serious problem for our court personnel because scheduled hearings are disrupted when changes of venue have not been authorized by the Immigration Judge, and detained aliens are not available at the original location where the charging document was filed. The situation is further complicated when the INS presents these detainees at a second Immigration Court for hearing. Absent a valid order changing venue, the second Immigration Judge has no jurisdiction in these cases except to deal with bond questions, if presented.

In order to avoid these problems, please ensure that the following steps continue to be followed:

a) Pursuant to the Uniform Docketing System, schedule the initial hearing and notify all parties as soon as practicable after receiving the charging document;

b) Instruct INS personnel to file a motion for a COV with the Immigration Court and obtain a ruling on the motion *before* INS attempts to relocate any detained alien subject to removal proceedings; and

c) Provide adequate opportunity to both parties to state their views regarding the motion to change venue.

V. Addressing the Large Venue Caseload

The large number of requests for changes of venue periodically creates specific problems in caseload management between our courts. I expect that many of these problems will be adequately resolved through implementation of this OPPM. These policies and procedures, however, require that every Immigration Judge, in fairness to the receiving Immigration Court, make an effort to ensure that "good cause has been shown" before granting a Motion to Change Venue.

If you have any questions regarding this OPPM, please contact my Legal Counsel, Michael Straus, at (703) 305-1716 or your Assistant Chief Immigration Judge.

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Michael J. Creppy
Chief Immigration Judge